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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/933,013	08/21/2001	Shane R. McGill	978-54	6077

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EXAMINER

SORKIN, DAVID L

[REDACTED]  
ART UNIT            PAPER NUMBER

1723

DATE MAILED: 03/06/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/933,013	MCGILL, SHANE R.	
	Examiner David L. Sorkin	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 14 February 2003.

2a) This action is FINAL.                  2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 33-58 is/are pending in the application.

4a) Of the above claim(s) 33-44 and 55-58 is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 45-54 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) 33-58 are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) All b) Some \* c) None of:  
1. Certified copies of the priority documents have been received.  
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) The translation of the foreign language provisional application has been received.

15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1 .	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Election/Restrictions***

1. Applicant's election of Group II, claims 45-54 in Paper No. 6 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

### ***Claim Objections***

2. Claims 49 and 50 objected to under 37 CFR 1.75(c) and 35 U.S.C. 112, fourth paragraph, as being of improper dependent form for failing to further limit the subject matter of a previous claim. See MPEP 608.01(n)(II) and (III), which states "Any claim which is in dependent form but which is so worded that it, in fact is not, as, for example does not include every limitation of the claim from which it depends, will be required to be *canceled* as not being a proper dependent claim". Applicant is required to cancel the claims, or amend the claims to place the claims in proper dependent form, or rewrite the claims in independent form.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.
4. Claims 49 and 50 are rejected under 35 U.S.C. 112, first paragraph as being "single means claims". See MPEP 2164.08(a). It is also noted that section 112, sixth

paragraph only permits means-plus-function limitations for *subcombination* elements, not an entire invention.

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 45-54 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

7. The scope of claim 45 is unclear in that both an "impeller" and "impeller means" are separately recited. Applicant should select only one of these terms. It must be clear whether or not section 112, sixth paragraph is being invoked.

8. In claim 48, there is lack of antecedent basis for "said seating".

9. The scope of claims 49 and 50 are rendering indefinite by the usage of the terms "container lid means ... comprising a container lid" and "blending means which include a blending element". Firstly, because "container lid" is not a function, the term "container lid means" is indefinite. See *Ex parte Klumb*, 159 USPQ 694 (Bd. App. 1967). Secondly, in claims 49 and 50, because the terms "container lid means" and "blending means" each have structural (as opposed to functional) limitations set forth (such as "comprising a container lid" and "include a blending element") the actual scope of the claims is unclear, because it is unclear whether section 112, sixth paragraph is being invoked. See MPEP 2181, especially "the phrase 'means for' or 'step for' must not be modified by sufficient structure, material or acts for achieving the specified function".

Art Unit: 1723

10. Claim 51 is rendered indefinite by the term "container lid means", because "container lid" is not a function. See *Ex parte Klumb*, supra.
11. In claims 52 and 53, it is unclear if the "seating" is part of the claimed structure.
12. In claim 54, there is lack of antecedent basis for "the seating".
13. Claim 54 is rendered indefinite by the term "jug means", because "jug" is not a function. See *Ex parte Klumb*, supra.

***Claim Rejections - 35 USC § 102***

14. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

15. Claims 45-54 are rejected under 35 U.S.C. 102(b) as being anticipate by Graves (US 1,351,243). Regarding claim 45, Graves ('243) discloses a container comprising a vessel (52), a lid (54); blending means including a impeller (50) mounted on the lid, the blending means being drivably connectable to drive means (12) external to the container. Regarding claim 46, the container is vessel is nestable with other vessel (see the shape of the container is Fig. 1). The container is capable of being used in the manner discussed in claims 47 and 48. These claims set forth no further structural limitations. Regarding claim 49, Graves ('243) discloses a lid (54) having a blend element (50) projecting from one side. Regarding claim 50, drive engagement means (including 46) are disclosed. Regarding claim 51, Graves ('243) discloses an apparatus comprising a container including a vessel (52) and a lid means (56), the lid means

Art Unit: 1723

housing blending means including a rotatable impeller (50) extending into the vessel, drive means (10,12,32,34) for driving the impeller and mounting means for the container (see Fig. 1) and drive connection means (46) for connecting the drive means and the impeller. While it is unclear if claims 52-54 recite any further structure, a seating (14,16,22,26,44,58,54) houses the drive means and includes means (54) for embracing the sidewalls of the vessel. Regarding claim 54, jug means (54) is disclosed.

16. Claims 45-54 are rejected under 35 U.S.C. 102(b) as being anticipate by Boyce (US 4,487,509). Regarding claim 45, Boyce ('509) discloses a container comprising a vessel (12), a lid (14); blending means including a impeller (16) mounted on the lid, the blending means being drivably connectable to drive means (20) external to the container. Regarding claim 46, the container is vessel is nestable with other vessel (see the shape of the container is Figs. 1 and 3). The container is capable of being used in the manner discussed in claims 47 and 48. These claims set forth no further structural limitations. Regarding claim 49, Boyce ('509) discloses a lid (14) having a blend element (16) projecting from one side. Regarding claim 50, drive engagement means (58,112) are disclosed. Regarding claim 51, Boyce ('509) discloses an apparatus comprising a container including a vessel (12) and a lid means (14), the lid means housing blending means including a rotatable impeller (16) extending into the vessel, drive means (20) for driving the impeller and mounting means for the container (see Fig. 3) and drive connection means (46) for connecting the drive means and the impeller. While it is unclear if claims 52-54 recite any further structure, a seating (18)

Art Unit: 1723

houses the drive means and includes means (78) for embracing the sidewalls of the vessel. Regarding claim 54, jug means (18) is disclosed.

***Conclusion***

17. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 703-308-1121. The examiner can normally be reached on 8:00 -5:30 Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 703-308-0457. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



David Sorkin

March 4, 2003



CHARLES E. COOLEY  
PRIMARY EXAMINER